

Melvin B. Pearlston
Senior Counsel



Of Counsel
Robert B. Hancock

October 22, 2018

**60-DAY NOTICE OF VIOLATIONS OF
CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.5 *ET SEQ.*
(PROPOSITION 65)**

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

I represent Erika McCartney in this matter. Ms. McCartney has identified violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), which is codified at California Health and Safety Code § 25249.5 *et seq.*, with respect to the products identified below. These violations have occurred and continue to occur because the alleged Violator identified below failed to provide required clear and reasonable warnings with the identified products. This letter serves as a notice of these violations to the alleged Violator and the appropriate public enforcement agencies. Pursuant to Section 25249.7(d) of the statute, Ms. McCartney intends to file a private enforcement action in the public interest 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

General Information about Proposition 65. A copy of a summary of Proposition 65, prepared by the Office of Environmental Health hazard Assessment, is attached with the copy of this letter served to the alleged Violator identified below.

Alleged Violator. The names of the company covered by this notice that violated Proposition 65 (hereinafter "the Violator") is:

MusclePharm Corporation
Amazon.com, Inc.
Vitamin Shoppe, Inc.
Wal-Mart.com, USA, LLC
Wal-Mart Stores, Inc.
Jet.com, Inc.

Consumer Products and Listed Chemical. The products that are the subject of this notice and the chemical in those products identified as exceeding allowable levels are:

MusclePharm Combat XL Mass Gainer – Chocolate—Cadmium, Lead

On May 1, 1997, the State of California officially listed cadmium as a chemical known to cause developmental toxicity and male reproductive toxicity.

On February 27, 1987, the State of California officially listed lead as a chemical known to cause developmental toxicity and male and female reproductive toxicity. On October 1, 1992, the State of California officially listed lead and lead compounds as chemicals to cause cancer.

It should be noted that Ms. McCartney may continue to investigate other products that may reveal further violations and result in subsequent notices of violations.

Route of Exposure. The consumer exposures that are the subject of this notice result from the purchase, acquisition, and recommended use of these products. Consequently, the primary route of exposure to these chemicals has been and continues to be through ingestion.

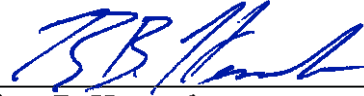
Approximate Time Period of Violations. Ongoing violations have occurred every day since at least October 22, 2017, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers or until these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons using these products with appropriate warnings that they are being exposed to these chemicals.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, Ms. McCartney is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violator to: (1) recall any products already sold, or undertake best efforts to ensure that the requisite health hazard warnings are provided to those who have received such products; (2) reformulate the identified products so as to eliminate further exposures to the identified chemicals, or provide appropriate warnings on the labels of these products; and (3) pay an appropriate civil penalty. Such a resolution will prevent further unwarned consumer exposures to the identified chemicals, as well as expensive and time-consuming litigation. It should be noted that counsel cannot (1) finalize any settlement until after the 60-day notice period has expired; or (2) speak for the California Attorney General or any District or City Attorney who has received this notice. Therefore, while reaching an agreement may satisfy the claims alleged herein, such agreement may not be satisfactory to public prosecutors.

Ms. McCartney has retained me as legal counsel in connection with this matter. Her address is 383 Stanwick St., Brentwood, California 94513. Her telephone number is 707.502.8635. **Please direct all communications regarding this Notice of Violations to my attention at the law office address and telephone number indicated on the letterhead.**

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Sincerely,



Robert B. Hancock
robh@rbhancocklaw.com

Attachments:

- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to Violators only)
- Additional Supporting Information for Certificate of Merit (to AG only)

CERTIFICATE OF MERIT

Re: Notice of Proposition 65 Violations

Robert B. Hancock declares:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the parties identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.

2. I am an attorney for the noticing party.

3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposures to the listed chemicals and the subject of the action.

4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that “reasonable and meritorious case for the private action” means that information provides a credible basis that all elements of the plaintiff’s case can be established and that the information did not prove that the alleged Violator will be able to establish any of the affirmative defenses set forth in the statute.

5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code § 25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: October 22, 2018



Robert B. Hancock

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States, over the age of 18 years of age, and am not a party to the within action.

On October 22, 2018, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE § 25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it in a US Postal Service Office with the postage fully prepaid and delivery by Certified Mail:

Current CEO or President
MusclePharm Corporation
4400 Vanowen Street
Burbank, CA 91505

Current Manager or Managing Member
Wal-Mart.com, USA, LLC
850 Cherry Avenue
San Bruno, CA 94066

Current CEO or President
Amazon.com, Inc.
410 Terry Avenue North
Seattle, WA 98109-5210

Current CEO or President
Wal-Mart Stores, Inc.
702 S.W. 8th Street
Bentonville, AR 72716

Current CEO or President
Vitamin Shoppe, Inc.
300 Harmon Meadow Boulevard
Secaucus, NJ 07094

Current CEO or President
Jet.com, Inc.
221 River Street, 8th Floor
Hoboken, NJ 07030

On October 22, 2018, I served the following documents: **NOTICE OF VIOLATION CALIFORNIA HEALTH & SAFETY CODE § 25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE § 25249.7(D)(1)** on the following parties by uploading the foregoing documents at the webpage listed below:

Office of the California Attorney General
Prop 65 Enforcement Reporting
1515 Clay Street, Ste. 2000
P.O. Box 70550
Oakland, CA 94612-0550
<https://oag.ca.gov/prop65/add-60-day-notice>

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On October 22, 2018, I served the following Documents: **NOTICE OF VIOLATION CALIFORNIA HEALTH & SAFETY CODE § 25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto. As to those parties listed by mailing address only, I effected service by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties **on the Service list attached hereto**, and depositing it with the U.S. Postal Service with postage fully prepaid for delivery by Priority Mail. As to those parties having an e-mail address listed, I effected service by transmitting the document via electronic transmission to the email address listed.

Executed under penalty of perjury pursuant to the laws of the State of California on October 22, 2018.



Robert B. Hancock

Notice of Violations of California Health & Safety Code § 25249.5, *et seq.*

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Service List

District Attorney,
Alameda County
1225 Fallon Street, Room 900
Oakland, CA 94612; CEPD@prop65.org

District Attorney, Alpine County
P.O. Box 248
Markleeville, CA 96120

District Attorney, Amador County
708 Court Street, #202
Jackson, CA 95642

District Attorney, Butte County
25 County Center Drive
Oroville, CA 95965

District Attorney, Calaveras County
891 Mountain Ranch Road
San Andreas, CA 95249

District Attorney, Colusa County
547 Market Street
Colusa, CA 95932

District Attorney,
Contra Costa County
900 Ward Street
Martinez, CA 94553
prop65@contracosta.ca.us

District Attorney,
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450 H Street, Ste. 171
Crescent City, CA 95531

District Attorney, El Dorado County
515 Main Street
Placerville, CA 95667

District Attorney, Fresno County
2220 Tulare Street, #1000
Fresno, CA 93721

District Attorney, Placer County
10810 Justice Center Drive, Ste 240
Roseville, CA 95678

District Attorney, Plumas County
520 Main Street, Room 404
Quincy, CA 95971

District Attorney, Riverside County
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Riverside, CA 92502
Prop65@rivcoda.org

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901 "G" Street
Sacramento, CA 95814
Prop65@sacramento.ca.us

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419 Fourth Street, 2nd Floor
Hollister, CA 95023

District Attorney, San Bernardino County
316 N. Mountain View Avenue
San Bernardino, CA 92415-0004

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330 West Broadway, Room 1300
San Diego, CA 92101

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850 Bryant Street, Room 322
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San Francisco, CA 94102

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Bishop, CA 93514

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Los Angeles, CA 90012

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Yreka, CA 96097

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675 Texas Street, Ste 4500
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Modesto, CA 95353

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San Rafael, CA 94903

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District Attorney,
Mendocino County
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Merced, CA 95340

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Alturas, CA 96101-4020

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Marysville, CA 95901

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Los Angeles, CA 90012

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Office of the City Attorney
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